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SENATE BILL 17

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Lynda M. Lovejoy

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO MINING; REVISING THE DEFINITIONS OF MINERALS AND
MINING; REQUIRING PUBLIC HEARINGS PRIOR TO THE ISSUANCE OF ANY
PERMITS; RESTRICTING THE LOCATION OF URANIUM MINING AND
DRILLING ACTIVITIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 69-36-3 NMSA 1978 (being Laws 1993,
Chapter 315, Section 3) is amended to read:

"69-36-3. DEFINITIONS.--As used in the New Mexico Mining
Act:

A. "affected area" means the area outside of the
permit area where the land surface, surface water, ground water
and air resources are [~~impacted~~] affected by mining operations
within the permit area;

B. "commission" means the mining commission

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1 established in the New Mexico Mining Act;

2 C. "director" means the director of the division or
3 [~~his~~] the director's designee;

4 D. "division" means the mining and minerals
5 division of the energy, minerals and natural resources
6 department;

7 E. "existing mining operation" means an extraction
8 operation that produced marketable minerals for a total of at
9 least two years between January 1, 1970 and [~~the effective date~~
10 ~~of the New Mexico Mining Act~~] June 18, 1993;

11 F. "exploration" means the act of searching for or
12 investigating a mineral deposit, including sinking shafts,
13 tunneling, drilling core and bore holes, digging pits, making
14 cuts and other works for the purpose of extracting samples
15 prior to commencement of development or extraction operations
16 and the building of roads, access ways and other facilities
17 related to such work; however, activities that cause no or very
18 little surface disturbance, such as airborne surveys and
19 photographs, use of instruments or devices that are hand
20 carried or otherwise transported over the surface to perform
21 magnetic, radioactive or other tests and measurements, boundary
22 or claim surveying, location work or other work that causes no
23 greater disturbance than is caused by ordinary lawful use of
24 the area by persons not engaged in exploration, are excluded
25 from the meaning of "exploration";

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1 G. "mineral" means a nonliving commodity that is
2 extracted from the earth for use or conversion into a saleable
3 or usable product, but does not include clays, adobe,
4 flagstone, potash, sand, gravel, caliche, borrow dirt or quarry
5 rock used as aggregate for construction; coal; surface water or
6 subsurface water; geothermal resources; or oil and natural gas
7 together with other chemicals recovered with them;
8 [~~commodities, byproduct materials and wastes that are regulated~~
9 ~~by the nuclear regulatory commission or waste regulated under~~
10 ~~Subtitle C of the federal Resource Conservation and Recovery~~
11 ~~Act]~~

12 H. "mining" means the process of obtaining useful
13 minerals from the earth's crust or from previously disposed or
14 abandoned mining wastes, including exploration, open-cut mining
15 and surface operation, the disposal of refuse from underground
16 and in situ mining, mineral transportation, concentrating,
17 milling, evaporation, leaching and other processing. "Mining"
18 does not mean the exploration and extraction of potash, sand,
19 gravel, caliche, borrow dirt [~~and~~] or quarry rock used as
20 aggregate in construction; the exploration and extraction of
21 natural petroleum in a liquid or gaseous state by means of
22 wells or pipes; the development or extraction of coal; the
23 extraction of geothermal resources; or smelting, refining,
24 cleaning, preparation, transportation or other off-site
25 operations not conducted on permit areas; [~~or the extraction,~~

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1 ~~processing or disposal of commodities, byproduct materials or~~
2 ~~wastes or other activities regulated by the federal nuclear~~
3 ~~regulatory commission]~~

4 I. "new mining operation" means a mining operation
5 that engages in a development or extraction operation after
6 ~~[the effective date of the New Mexico Mining Act]~~ June 18, 1993
7 and that is not an existing mining operation;

8 J. "permit area" means the geographical area
9 defined in the permit for a new mining operation or for an
10 existing mining operation on which mining operations are
11 conducted or cause disturbance; and

12 K. "reclamation" means the employment during and
13 after a mining operation of measures designed to mitigate the
14 disturbance of affected areas and permit areas and, to the
15 extent practicable, provide for the stabilization of a permit
16 area following closure that will minimize future impact to the
17 environment from the mining operation and protect air and water
18 resources."

19 Section 2. Section 69-36-7 NMSA 1978 (being Laws 1993,
20 Chapter 315, Section 7, as amended) is amended to read:

21 "69-36-7. COMMISSION--DUTIES.--The commission shall:

22 A. before June 18, 1994, adopt and file reasonable
23 regulations consistent with the purposes and intent of the New
24 Mexico Mining Act necessary to implement the provisions of the
25 New Mexico Mining Act, including regulations that:

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1 (1) consider the economic and environmental
2 effects of their implementation;

3 (2) require permitting of all new and existing
4 mining operations and exploration; and

5 (3) require annual reporting of production
6 information to the commission, which shall be kept confidential
7 if otherwise required by law;

8 B. adopt regulations for new mining operations that
9 allow the director to select a qualified expert who may:

10 (1) review and comment to the director on the
11 adequacy of baseline data gathered prior to submission of the
12 permit application for use in the permit application process;

13 (2) recommend to the director additional
14 baseline data that may be necessary in the review of the
15 proposed mining activity;

16 (3) recommend to the director methodology
17 guidelines to be followed in the collection of all baseline
18 data; and

19 (4) review and comment on the permit
20 application;

21 C. adopt regulations that require and provide for
22 the issuance and renewal of permits for new and existing mining
23 operations and exploration and that establish schedules to
24 bring existing mining operations into compliance with the
25 requirements of the New Mexico Mining Act; provided the term of

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1 a permit for a new mining operation shall not exceed twenty
2 years and the term of renewals of permits for new mining
3 operations shall not exceed ten years;

4 D. adopt regulations that provide for permit
5 modifications. The commission shall establish criteria to
6 determine which permit modifications may have significant
7 environmental impact. Modifications that the director
8 determines will have significant environmental impact shall
9 require public notice and an opportunity for public hearing
10 pursuant to Subsection K of this section. A permit
11 modification to the permit for an existing mining operation
12 shall be obtained for each new discrete processing, leaching,
13 excavation, storage or stockpile unit located within the permit
14 area of an existing mining operation and not identified in the
15 permit of an existing mining operation and for each expansion
16 of such a unit identified in the permit for an existing mining
17 operation that exceeds the design limits specified in the
18 permit. The regulations shall require that permit
19 modifications for such units be approved if the director
20 determines that the unit will:

21 (1) comply with the regulations regarding
22 permit modifications;

23 (2) incorporate the requirements of Paragraphs
24 (1), (2), (4), (5) and (6) of Subsection H of this section; and

25 (3) be sited and constructed in a manner that

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1 facilitates, to the maximum extent practicable, contemporaneous
2 reclamation consistent with the closeout plan;

3 E. adopt regulations that require new and existing
4 mining operations to obtain and maintain permits for standby
5 status. A permit for standby status shall be issued for a
6 maximum term of five years; provided that, upon application,
7 the director may renew a permit for standby status for no more
8 than three additional five-year terms. The regulations shall
9 require that, before a permit for standby status is issued or
10 renewed, an owner or operator shall:

11 (1) identify the projected term of standby
12 status for each unit of the new or existing mining operation;

13 (2) take measures that reduce, to the extent
14 practicable, the formation of acid and other toxic drainage to
15 prevent releases that cause federal or state environmental
16 standards to be exceeded;

17 (3) meet applicable federal and state
18 environmental standards and regulations during the period of
19 standby status;

20 (4) stabilize waste and storage units, leach
21 piles, impoundments and pits during the term of standby status;

22 (5) comply with applicable requirements of the
23 New Mexico Mining Act and the regulations adopted pursuant to
24 that act; and

25 (6) provide an analysis of the economic

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1 viability of each unit proposed for standby status;

2 F. establish by regulation closeout plan
3 requirements for existing mining operations that incorporate
4 site-specific characteristics, including consideration of
5 disturbances from previous mining operations, and that take
6 into account the mining method utilized;

7 G. establish by regulation a procedure for the
8 issuance of a permit for an existing mining operation and for
9 modifications of that permit to incorporate approved closeout
10 plans or portions of closeout plans and financial assurance
11 requirements for performance of the closeout plans. The permit
12 shall describe the permit area of the existing mining operation
13 and the design limits of units of the existing mining operation
14 based upon the site assessment submitted by the operator. The
15 permit shall contain a schedule for completion of a closeout
16 plan. The permit shall thereafter be modified to incorporate
17 the approved closeout plan or portions of the closeout plan
18 once financial assurance has been provided for completion of
19 the closeout plan or the approved portions of the closeout
20 plan. The permit may be modified for new mining units,
21 expansions beyond the design limits of a unit at an existing
22 mining operation or standby status;

23 H. establish by regulation permit and reclamation
24 requirements for new mining operations that incorporate site-
25 specific characteristics. These requirements shall, at a

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1 minimum:

2 (1) require that new mining operations be
3 designed and operated using the most appropriate technology and
4 the best management practices;

5 (2) ~~assure~~ ensure protection of human health
6 and safety, the environment, wildlife and domestic animals;

7 (3) include backfilling or partial backfilling
8 only when necessary to achieve reclamation objectives that
9 cannot be accomplished through other mitigation measures;

10 (4) require approval by the director that the
11 permit area will achieve a self-sustaining ecosystem
12 appropriate for the life zone of the surrounding areas
13 following closure unless conflicting with the approved post-
14 mining land use;

15 (5) require that new mining operations be
16 designed in a manner that incorporates measures to reduce, to
17 the extent practicable, the formation of acid and other toxic
18 drainage that may otherwise occur following closure to prevent
19 releases that cause federal or state standards to be exceeded;

20 (6) require that nonpoint source surface
21 releases of acid or other toxic substances shall be contained
22 within the permit area;

23 (7) require that all waste, waste management
24 units, pits, heaps, pads and any other storage piles are
25 designed, sited and constructed in a manner that facilitates,

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1 to the maximum extent practicable, contemporaneous reclamation
2 and are consistent with the new mining operation's approved
3 reclamation plan; and

4 (8) where sufficient topsoil is present, take
5 measures to preserve it from erosion or contamination and
6 [~~assure~~] ensure that it is in a usable condition for sustaining
7 vegetation when needed;

8 I. adopt regulations that establish a permit
9 application process for new mining operations that includes:

10 (1) disclosure of ownership and controlling
11 interests in the new mining operation or submission of the
12 applicant's most recent form 10K required by the federal
13 securities exchange commission;

14 (2) a statement of all mining operations
15 within the United States owned, operated or directly controlled
16 by the applicant, owner or operator and by persons or entities
17 that directly control the applicant and the names and the
18 addresses of regulatory agencies with jurisdiction over the
19 environmental aspects of those operations and that could
20 provide a compliance history for those operations [~~and~~] over
21 the preceding ten years. The operator shall assist the
22 applicant in obtaining compliance history information;

23 (3) a description of the type and method of
24 mining and the engineering techniques proposed;

25 (4) the anticipated starting and termination

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1 dates of each phase of the new mining operation and the number
2 of acres of land to be affected;

3 (5) the names of all affected watersheds, the
4 location of any perennial, ephemeral or intermittent surface
5 stream or tributary into which surface or pit drainage will be
6 discharged or may possibly be expected to reach and the
7 location of any spring within the permit area and the affected
8 area;

9 (6) a determination of the probable hydrologic
10 consequences of the new mining operation and reclamation, both
11 on and off the permit area, with respect to the hydrologic
12 regime, quantity and quality of surface and ground water
13 systems, including the dissolved and suspended solids under
14 seasonal flow conditions;

15 (7) cross-sections or plans of the permit area
16 depicting:

17 (a) the nature and depth of the various
18 formations of overburden;

19 (b) the location of subsurface water, if
20 encountered, and its quality;

21 (c) the nature and location of any ore
22 body to be mined;

23 (d) the location of aquifers and
24 springs;

25 (e) the estimated position and flow of

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1 the water table;

2 (f) the proposed location of waste rock,
3 tailings, stockpiles, heaps, pads and topsoil preservation
4 areas; and

5 (g) premining vegetation and wildlife
6 habitat features present at the site;

7 (8) the potential for geochemical alteration
8 of overburden, the ore body and other materials present within
9 the permit area;

10 (9) a reclamation plan that includes a
11 detailed description of the proposed post-mining land use and
12 how that use is to be achieved; and

13 (10) premining baseline data as required by
14 regulations adopted by the commission;

15 J. adopt regulations to coordinate the roles of
16 permitting agencies involved in regulating activities related
17 to new and existing mining operations and exploration,
18 including regulatory requirements, to avoid duplicative and
19 conflicting administration of the permitting process and other
20 requirements;

21 K. except for regulations enacted pursuant to
22 Subsection L of this section, adopt regulations that ensure
23 that the public and permitting agencies receive notice of each
24 application for issuance, renewal or revision of a permit for a
25 new or existing mining operation, for standby status, or

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1 exploration, a variance or an application for release of
2 financial assurance and any inspection prior to the release of
3 financial assurance, including a provision that no action shall
4 be taken on any application until an opportunity for a public
5 hearing, held in the locality of the operation, is provided and
6 that all interested persons shall be given a reasonable chance
7 to submit data, views or arguments orally or in writing and to
8 examine witnesses testifying at the hearing. An additional
9 opportunity for a public hearing may be provided if the
10 applicant makes substantial changes in the proposed action, if
11 there are significant new circumstances or information bearing
12 on the proposed action or if the applicant proposes to
13 [~~substantially~~] increase substantially the scale or
14 [~~substantially~~] change substantially the nature of the proposed
15 action and there is public interest and a request for a public
16 hearing. These regulations shall require at a minimum that the
17 applicant for issuance, renewal or revisions of a permit or a
18 variance or an application for release of financial assurance
19 and any inspection prior to release of financial assurance
20 shall provide to the director at the time of filing the
21 application with the director proof that notice of the
22 application and of the procedure for requesting a public
23 hearing has been:

24 (1) provided by certified mail to the owners
25 of record, as shown by the most recent property tax schedule,
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1 of all properties within one-half mile of the property on which
2 the mining operation is located or is proposed to be located;

3 (2) provided by certified mail to all
4 municipalities and counties within a ten-mile radius of the
5 property on which the mining operation is or will be located;

6 (3) published once in a newspaper of general
7 circulation in each county in which the property on which the
8 mining operation is or will be located; provided that this
9 notice shall appear in either the classified or legal
10 advertisements section of the newspaper and at one other place
11 in the newspaper calculated to give the general public the most
12 effective notice and, when appropriate, shall be printed in
13 both English and Spanish;

14 (4) posted in at least four publicly
15 accessible and conspicuous places, including the entrance to
16 the new or existing mining operation if that entrance is
17 publicly accessible and conspicuous;

18 (5) mailed to all persons who have made a
19 written request to the director for notice of this application;
20 and

21 (6) mailed by certified mail to all persons on
22 a list maintained by the director of individuals and
23 organizations who have requested notice of applications under
24 [~~this~~] the New Mexico Mining Act. If the application is
25 determined to be administratively complete by the director, the

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1 applicant shall provide to the director timely proof that
2 notice of that determination has been provided by first class
3 mail to everyone who has indicated to the applicant in writing
4 that they desire information regarding the application and to a
5 list maintained by the director of individuals and
6 organizations who have requested notice of applications under
7 this act;

8 L. adopt regulations to provide for permits,
9 [~~without~~] with notice and hearing, to address mining operations
10 that have minimal impact on the environment; provided that such
11 permits shall require general plans and shall otherwise reduce
12 the permitting requirements of the New Mexico Mining Act;

13 M. establish by regulation a schedule of annual
14 administrative and permit fees, which shall equal and not
15 exceed the estimated costs of administration, implementation,
16 enforcement, investigation and permitting pursuant to the
17 provisions of the New Mexico Mining Act. The size of the
18 operation, anticipated inspection frequency and other factors
19 deemed relevant by the commission shall be considered in the
20 determination of the fees. The fees established pursuant to
21 this subsection shall be deposited in the mining act fund;

22 N. establish by regulation a continuing process of
23 review of mining and reclamation practices in New Mexico that
24 provides for periodic review and amendment of regulations and
25 procedures to provide for the protection of the environment and

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1 consider the economic effects of the regulations;

2 O. adopt regulations governing the provision of
3 variances issued by the director, stating the procedures for
4 seeking a variance, including provisions for public notice and
5 an opportunity for a hearing in the locality where the variance
6 will be operative, the limitations on provision of variances,
7 requiring the petitioner to present sufficient evidence to
8 prove that failure to grant a variance will impose an undue
9 economic burden and that granting the variance will not result
10 in a significant threat to human health, safety or the
11 environment;

12 P. provide by regulation that, prior to the
13 issuance of any permit for a new mining operation pursuant to
14 the provisions of the New Mexico Mining Act, the permit
15 applicant or operator:

16 (1) shall provide evidence to the director
17 that other applicable state and federal permits required to be
18 obtained by the new or existing mining operation either have
19 been or will be issued before the activities subject to those
20 permits begin; and

21 (2) shall provide to the director a written
22 determination from the secretary of environment stating that
23 the permit applicant has demonstrated that the activities to be
24 permitted or authorized will be expected to achieve compliance
25 with all applicable air and water quality and other

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1 environmental standards if carried out as described;

2 Q. require by regulation that the applicant file
3 with the director, prior to the issuance of a permit, financial
4 assurance. The amount of the financial assurance shall be
5 sufficient to assure the completion of the performance
6 requirements of the permit, including closure and reclamation,
7 if the work [~~had~~] has to be performed by the director or a
8 third-party contractor and shall include periodic review to
9 account for any inflationary increases and anticipated changes
10 in reclamation or closure costs. The regulations shall specify
11 that financial requirements shall neither duplicate nor be less
12 comprehensive than the federal financial requirements. The
13 form and amount of the financial assurance shall be subject to
14 the approval of the director as part of the permit application;
15 provided that the financial assurance does not include any type
16 or variety of self-guarantee or self-insurance;

17 R. require by regulation that the permittee may
18 file an application with the director for the release of all or
19 part of the permittee's financial assurance. The permittee
20 shall not file an application for release of financial
21 assurance more than once per year for each mining operation.
22 The application shall describe the reclamation measures
23 completed and shall contain an estimate of the costs of
24 reclamation measures that have not been completed. Prior to
25 release of any portion of the permittee's financial assurance,

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1 the director shall conduct an inspection and evaluation of the
2 reclamation work involved. The director shall notify persons
3 who have requested advance notice of the inspection.
4 Interested members of the public shall be allowed to be present
5 at the inspection of the reclamation work by the director.

6 (1) The director may release in whole or in
7 part the financial assurance if the reclamation covered by the
8 financial assurance has been accomplished as required by the
9 New Mexico Mining Act; provided that the director shall retain
10 financial assurance at least equal to the approved estimated
11 costs of completing reclamation measures that have not been
12 completed; and provided further that for revegetated areas, the
13 director shall retain the amount of financial assurance
14 necessary for a third party to reestablish vegetation for a
15 period of twelve years after the last year of augmented
16 seeding, fertilizing, irrigation or other work, unless a post-
17 mining land use is achieved that is inconsistent with the
18 further need for revegetation. For new mining operations only,
19 no part of the financial assurance necessary for a third party
20 to reestablish vegetation shall be released so long as the
21 lands to which the release would be applicable are contributing
22 suspended solids above background levels to streamflow of
23 intermittent and perennial streams.

24 (2) A person with an interest that is or will
25 be adversely affected by release of the financial assurance may

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1 file, with the director within thirty days of the date of the
2 inspection, written objections to the proposed release from
3 financial assurance. If written objections are filed and a
4 hearing is requested, the director shall inform all the
5 interested parties of the time and place of the hearing at
6 least thirty days in advance of the public hearing and hold a
7 public hearing in the locality of the new or existing mining
8 operation or exploration operation proposed for release from
9 financial assurance. The date, time and location of the public
10 hearing shall be advertised by the director in a newspaper of
11 general circulation in the locality for two consecutive weeks,
12 and all persons who have submitted a written request in advance
13 to the director to receive notices of hearings shall be
14 provided notice at least thirty days prior to the hearing;

15 S. establish coordinated procedures that avoid
16 duplication for the inspection, monitoring and sampling of air,
17 soil and water and enforcement of applicable requirements of
18 the New Mexico Mining Act, regulations adopted pursuant to that
19 act and permit conditions for new and existing mining
20 operations and exploration. The regulations shall require, at
21 a minimum:

22 (1) inspections by the director occurring on
23 an irregular basis according to the following schedule:

24 (a) at least one inspection per month
25 when the mining operation is conducting significant reclamation

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1 activities;

2 (b) at least two inspections per year
3 for active mining operations;

4 (c) at least one inspection per year on
5 inactive sites;

6 (d) at least one inspection per year
7 following completion of all significant reclamation activities,
8 but prior to release of financial assurance; and

9 (e) mining operations having a minimal
10 impact on the environment and exploration operations [~~will~~]
11 shall be inspected on a schedule to be established by the
12 commission;

13 (2) inspections shall occur without prior
14 notice to the permittee or [~~his~~] the permittee's agents or
15 employees except for necessary on-site meetings with the
16 permittee;

17 (3) when the director determines that a
18 condition or practice exists that violates a requirement of the
19 New Mexico Mining Act, a regulation adopted pursuant to that
20 act or a permit issued under that act, which condition,
21 practice or violation also creates an imminent danger to the
22 health or safety of the public or will cause significant
23 imminent environmental harm, the director shall immediately
24 order a cessation of the new or existing mining operation or
25 the exploration operation or the portion of that operation

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1 relevant to the condition, practice or violation. The
2 cessation order shall remain in effect until the director
3 determines that the condition, practice or violation has been
4 abated or until modified, vacated or terminated by the director
5 or the commission;

6 (4) when the director determines that an owner
7 or operator is in violation of a requirement of the New Mexico
8 Mining Act, a regulation adopted pursuant to that act or a
9 permit issued pursuant to that act but the violation does not
10 create an imminent danger to the health or safety of the public
11 or will not cause significant imminent environmental harm, the
12 director shall issue a notice to the owner or operator fixing a
13 reasonable time, not to exceed sixty days, for the abatement of
14 the violation. If, upon expiration of the period of time as
15 originally fixed or subsequently extended for good cause shown,
16 the director finds that the violation has not been abated, [~~he~~]
17 the director shall immediately order a cessation of new or
18 existing mining operations or exploration operations or the
19 portion thereof relevant to the violation. The cessation order
20 shall remain in effect until the director determines that the
21 violation has been abated; and

22 (5) when the director determines that a
23 pattern of violations of the requirements of the New Mexico
24 Mining Act or of the regulations adopted pursuant to that act
25 or the permit required by that act exists or has existed and,

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1 if the director also finds that such violations are caused by
2 the unwarranted failure of the owner or operator to comply with
3 the requirements of that act, regulation or permit or that such
4 violations are willfully caused by the owner or operator, the
5 director shall immediately issue an order to the owner or
6 operator to show cause as to why the permit should not be
7 suspended or revoked;

8 T. provide for the transfer of a permit to a
9 successor operator, providing for release of the first operator
10 from obligations under the permit, including financial
11 assurance, following the approved assumption of such
12 obligations and financial assurance by the successor operator;

13 U. adopt regulations providing that the owner or
14 operator of an existing mining operation or a new mining
15 operation who has completed some reclamation measures prior to
16 the effective date of the regulations adopted pursuant to the
17 New Mexico Mining Act may apply for an inspection of those
18 reclamation measures and a release from further requirements
19 pursuant to that act for the reclaimed areas if, after an
20 inspection, the director determines that the reclamation
21 measures satisfy the requirements of that act and the
22 substantive requirements for reclamation pursuant to the
23 applicable regulatory standards; and

24 V. develop and adopt other regulations necessary
25 and appropriate to carry out the purposes and provisions of the

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1 New Mexico Mining Act."

2 Section 3. Section 69-36-12 NMSA 1978 (being Laws 1993,
3 Chapter 315, Section 12) is amended to read:

4 "69-36-12. NEW MINING OPERATIONS--MINING OPERATION PERMIT
5 REQUIRED.--

6 A. After ~~[the effective date of the New Mexico~~
7 ~~Mining Act]~~ June 18, 1993, except as provided in Section ~~[5 of~~
8 ~~that act]~~ 69-36-5 NMSA 1978, no person shall conduct a new
9 mining operation without a permit issued by the director.
10 Applications for permits for new mining operations operating
11 pursuant to Section ~~[5 of the New Mexico Mining Act]~~ 69-36-5
12 NMSA 1978 shall be received by the director by December 31,
13 1995. The director may grant one extension for the submission
14 of a permit application for a new mining operation for six
15 months for good cause shown. Prior to receiving a permit for a
16 new mining operation, an applicant shall submit an application
17 that complies with the New Mexico Mining Act and ~~[regulation]~~
18 regulations of the commission, including, at a minimum, one
19 year of baseline data as required by regulation.

20 B. The director shall issue the permit for a new
21 mining operation if the director finds that:

- 22 (1) the permit application is complete;
23 (2) the permit application fee has been paid
24 and the financial assurance is adequate and has been provided;
25 (3) reclamation in accordance with the

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1 proposed reclamation plan is economically and technically
2 feasible;

3 (4) the mining operation is designed to meet
4 without perpetual care all applicable environmental
5 requirements imposed by the New Mexico Mining Act and
6 regulations adopted pursuant to that act and other laws
7 following closure; and

8 (5) the applicant, the operator or owner or
9 any persons or entities directly controlled by the applicant,
10 operator or owner or any persons or entities that directly
11 control the applicant, operator or owner:

12 (a) are not currently in violation of
13 the terms of another permit issued by the division or in
14 violation of any substantial environmental law or substantive
15 environmental regulation at a mining operation in the United
16 States, which violation is unabated and is not the subject of
17 appeal, and have not forfeited or had forfeited financial
18 assurance required for any mining, reclamation or exploration
19 permit in the United States; provided that a violation that
20 occurred prior to the initiation of a legal relationship
21 between the permit applicant and the violator shall not be
22 considered for purposes of this paragraph; and

23 (b) have not demonstrated a pattern of
24 willful violations of the New Mexico Mining Act or other New
25 Mexico environmental statutes; provided that a violation that

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1 occurred prior to the initiation of a legal relationship
2 between the permit applicant and the violator shall not be
3 considered for purposes of this paragraph.

4 C. The permit for a new mining operation may be
5 revoked or suspended by order of the director for violation of
6 its terms or conditions, a regulation of the commission or a
7 provision of the New Mexico Mining Act.

8 D. The director shall not issue a permit for a new
9 mining operation related to uranium mining if such mining will:

10 (1) occur within one thousand feet of an
11 existing dwelling; or

12 (2) occur within one thousand feet of any
13 imaginary line extending vertically from an existing dwelling."

14 Section 4. Section 69-36-13 NMSA 1978 (being Laws 1993,
15 Chapter 315, Section 13) is amended to read:

16 "69-36-13. EXPLORATION PERMIT.--

17 A. After December 31, 1994, a person shall not
18 engage in exploration operations in New Mexico without first
19 obtaining a permit to conduct exploration from the director.
20 In order to be approved by December 31, 1994, the application
21 for a permit to conduct exploration shall be submitted by
22 September 1, 1994. A permit to conduct exploration shall not
23 be issued for a period of more than one year from the date of
24 issue and is renewable from year to year upon application. An
25 application for renewal of a permit to conduct exploration

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1 shall be filed within thirty days preceding the expiration of
2 the current permit. A permit to conduct exploration shall not
3 be renewed if the applicant for renewal is in violation of any
4 provision of the New Mexico Mining Act.

5 B. A person shall not be issued a permit to conduct
6 exploration if that person's failure to comply with the
7 provisions of the New Mexico Mining Act, the regulations
8 adopted pursuant to that act or a permit issued ~~[under]~~
9 pursuant to that act has resulted in the forfeiture of
10 financial assurance.

11 C. An applicant for a permit to conduct exploration
12 shall not be issued a permit to conduct exploration until ~~[he]~~
13 the applicant:

14 (1) pays a permit fee for exploration;
15 (2) agrees to reclaim any surface area damaged
16 by the applicant during exploration operations in accordance
17 with a reclamation plan submitted to and approved by the
18 director; and

19 (3) certifies that ~~[he]~~ the applicant is not
20 in violation of any other ~~[obligation under]~~ provision of the
21 New Mexico Mining Act or the regulations adopted pursuant to
22 that act.

23 D. The application for a permit to conduct
24 exploration shall include an exploration map in sufficient
25 detail to locate the area to be explored and to determine

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1 whether environmental problems would be encountered. The
2 commission shall establish regulations to determine the precise
3 nature of and requirements for the exploration map. The
4 application shall state what type of exploration and excavation
5 techniques will be employed in disturbing the land during
6 exploration operations.

7 E. Prior to the issuance of a permit to conduct
8 exploration, the applicant shall provide to the division
9 financial assurance in a form and amount as determined by the
10 director pursuant to Section [~~7 of the New Mexico Mining Act~~]
11 69-36-7 NMSA 1978. The financial assurance shall be released
12 only in accordance with the provisions of [~~that~~] the New Mexico
13 Mining Act.

14 F. In the event that the holder of a permit to
15 conduct exploration desires to mine the permit area to conduct
16 exploration and [~~he~~] the holder has fulfilled all of the
17 requirements for a permit for new mining operations, the
18 director shall allow postponement of the reclamation of the
19 acreage explored if that acreage is incorporated into the
20 complete reclamation plan submitted with the application for a
21 permit for a new mining operation. Land affected by
22 exploration or excavation under a permit for exploration and
23 not covered by the reclamation plan shall be reclaimed in a
24 manner acceptable to the director within two years after the
25 completion of exploration or abandonment of the site.

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1 G. The director shall not issue a permit for
2 exploration drilling related to uranium mining if such drilling
3 will:

4 (1) occur within one thousand feet of an
5 existing dwelling; or

6 (2) occur within one thousand feet of any
7 imaginary line extending vertically from an existing dwelling."

8 Section 5. Section 74-6-5 NMSA 1978 (being Laws 1973,
9 Chapter 326, Section 4, as amended) is amended to read:

10 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

11 A. By regulation, the commission may require persons
12 to obtain from a constituent agency designated by the commission
13 a permit for the discharge of any water contaminant or for the
14 disposal or reuse of septage or sludge.

15 B. The commission shall adopt regulations
16 establishing procedures for certifying federal water quality
17 permits.

18 C. Prior to the issuance of a permit, the
19 constituent agency may require the submission of plans,
20 specifications and other relevant information that it deems
21 necessary.

22 D. The commission shall by regulation set the dates
23 upon which applications for permits shall be filed and designate
24 the time periods within which the constituent agency shall,
25 after the filing of an administratively complete application for

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1 a permit, either grant the permit, grant the permit subject to
2 conditions or deny the permit.

3 E. The constituent agency shall deny any application
4 for a permit or deny the certification of a federal water
5 quality permit if:

6 (1) the effluent would not meet applicable
7 state or federal effluent regulations, standards of performance
8 or limitations;

9 (2) any provision of the Water Quality Act
10 would be violated;

11 (3) the discharge would cause or contribute to
12 water contaminant levels in excess of any state or federal
13 standard. Determination of the discharges' effect on ground
14 water shall be measured at any place of withdrawal of water for
15 present or reasonably foreseeable future use. Determination of
16 the discharges' effect on surface waters shall be measured at
17 the point of discharge; or

18 (4) the applicant has, within the ten years
19 immediately preceding the date of submission of the permit
20 application:

21 (a) knowingly misrepresented a material
22 fact in an application for a permit;

23 (b) refused or failed to disclose any
24 information required under the Water Quality Act;

25 (c) been convicted of a felony or other

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1 crime involving moral turpitude;

2 (d) been convicted of a felony in any
3 court for any crime defined by state or federal law as being a
4 restraint of trade, price-fixing, bribery or fraud;

5 (e) exhibited a history of willful
6 disregard for environmental laws of any state or the United
7 States; or

8 (f) had an environmental permit revoked
9 or permanently suspended for cause under any environmental laws
10 of any state or the United States.

11 F. The commission shall by regulation develop
12 procedures that ensure that the public, affected governmental
13 agencies and any other state whose water may be affected shall
14 receive notice of each application for issuance, renewal or
15 modification of a permit. Public notice shall include:

16 (1) for issuance or modification of a permit:

17 (a) notice by mail to adjacent and nearby
18 landowners; local, state and federal governments; land grant
19 organizations; ditch associations; and Indian nations, tribes or
20 pueblos;

21 (b) posting at a place conspicuous to the
22 public and near the discharge or proposed discharge site; and

23 (c) a display advertisement in English
24 and Spanish in a newspaper of general circulation in the
25 location of the discharge or proposed discharge; provided,

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1 however, that the advertisement shall not be displayed in the
2 classified or legal advertisement sections; and

3 (2) for issuance of renewals of permits:

4 (a) notice by mail to the interested
5 public, municipalities, counties, land grant organizations,
6 ditch associations and Indian nations, tribes or pueblos; and

7 (b) a display advertisement in English
8 and Spanish in a newspaper of general circulation in the
9 location of the discharge; provided, however, that the
10 advertisement shall not be displayed in the classified or legal
11 advertisement sections.

12 G. No ruling shall be made on any application for a
13 permit without opportunity for a public hearing at which all
14 interested persons shall be given a reasonable chance to submit
15 evidence, data, views or arguments orally or in writing and to
16 examine witnesses testifying at the hearing. The hearing shall
17 be recorded. Any person submitting evidence, data, views or
18 arguments shall be subject to examination at the hearing.

19 H. The commission may adopt regulations for the
20 operation and maintenance of the permitted facility, including
21 requirements, as may be necessary or desirable, that relate to
22 continuity of operation, personnel training and financial
23 responsibility, including financial responsibility for
24 corrective action.

25 I. Permits shall be issued for fixed terms not to

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1 exceed five years, except that for new discharges, the term of
2 the permit shall commence on the date the discharge begins, but
3 in no event shall the term of the permit exceed seven years from
4 the date the permit was issued.

5 J. By regulation, the commission may impose
6 reasonable conditions upon permits requiring permittees to:

7 (1) install, use and maintain effluent
8 monitoring devices;

9 (2) sample effluents and receiving waters for
10 any known or suspected water contaminants in accordance with
11 methods and at locations and intervals as may be prescribed by
12 the commission;

13 (3) establish and maintain records of the
14 nature and amounts of effluents and the performance of effluent
15 control devices;

16 (4) provide any other information relating to
17 the discharge or direct or indirect release of water
18 contaminants; and

19 (5) notify a constituent agency of the
20 introduction of new water contaminants from a new source and of
21 a substantial change in volume or character of water
22 contaminants being introduced from sources in existence at the
23 time of the issuance of the permit.

24 K. The commission shall provide by regulation a
25 schedule of fees for permits, not exceeding the estimated cost

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1 of investigation and issuance, modification and renewal of
2 permits. Fees collected pursuant to this section shall be
3 deposited in the water quality management fund.

4 L. The issuance of a permit does not relieve any
5 person from the responsibility of complying with the provisions
6 of the Water Quality Act, any applicable regulations or water
7 quality standards of the commission or any applicable federal
8 laws, regulations or standards.

9 M. A permit may be terminated or modified by the
10 constituent agency that issued the permit prior to its date of
11 expiration for any of the following causes:

12 (1) violation of any condition of the permit;

13 (2) obtaining the permit by misrepresentation
14 or failure to disclose fully all relevant facts;

15 (3) violation of any provisions of the Water
16 Quality Act or any applicable regulations, standard of
17 performance or water quality standards;

18 (4) violation of any applicable state or
19 federal effluent regulations or limitations; or

20 (5) change in any condition that requires
21 either a temporary or permanent reduction or elimination of the
22 permitted discharge.

23 N. If the constituent agency denies, terminates or
24 modifies a permit or grants a permit subject to condition, the
25 constituent agency shall notify the applicant or permittee by

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1 certified mail of the action taken and the reasons. Notice
2 shall also be given by mail to persons who participated in the
3 permitting action.

4 O. A person who participated in a permitting action
5 before a constituent agency or a person affected by a
6 certification of a federal permit and who is adversely affected
7 by such permitting action or certification may file a petition
8 for review before the commission. Unless a timely petition for
9 review is made, the decision of the constituent agency shall be
10 final and not subject to judicial review. The petition shall:

11 (1) be made in writing to the commission
12 within thirty days from the date notice is given of the
13 constituent agency's action;

14 (2) include a statement of the issues to be
15 raised and the relief sought; and

16 (3) be provided to all other persons
17 submitting evidence, data, views or arguments in the proceeding
18 before the constituent agency.

19 P. If a timely petition for review is made, the
20 commission shall consider the petition within ninety days after
21 receipt of the petition. The commission shall notify the
22 petitioner and the applicant or permittee, if other than the
23 petitioner, by certified mail of the date, time and place of the
24 review. If the petitioner is not the applicant or permittee,
25 the applicant or permittee shall be a party to the proceeding.

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1 The commission shall ensure that the public receives notice of
2 the date, time and place of the review.

3 Q. The commission shall review the record compiled
4 before the constituent agency, including the transcript of any
5 public hearing held on the application or draft permit, and
6 shall allow any party to submit arguments. The commission may
7 designate a hearing officer to review the record and the
8 arguments of the parties and recommend a decision to the
9 commission. The commission shall consider and weigh only the
10 evidence contained in the record before the constituent agency
11 and the recommended decision of the hearing officer, if any, and
12 shall not be bound by the factual findings or legal conclusions
13 of the constituent agency. Based on the review of the evidence,
14 the arguments of the parties and recommendations of the hearing
15 officer, the commission shall sustain, modify or reverse the
16 action of the constituent agency. The commission shall enter
17 ultimate findings of fact and conclusions of law and keep a
18 record of the review.

19 R. Prior to the date set for review, if a party
20 shows to the satisfaction of the commission that there was no
21 reasonable opportunity to submit comment or evidence on an issue
22 being challenged, the commission shall order that additional
23 comment or evidence be taken by the constituent agency. Based
24 on the additional evidence, the constituent agency may revise
25 the decision and shall promptly file with the commission the

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1 additional evidence received and action taken. The commission
2 shall consider the additional evidence within ninety days after
3 receipt of the additional evidence and shall notify the
4 petitioner and the applicant or permittee, if other than the
5 petitioner, of the date, time and place of the review.

6 S. The commission shall notify the petitioner and
7 all other participants in the review proceeding of the action
8 taken by the commission and the reasons for that action.

9 T. The constituent agency shall deny any application
10 for a permit or deny the certification of a federal water
11 quality permit if the permit is related to drilling for in situ
12 uranium mining and if the drilling will:

13 (1) occur within one thousand feet of an
14 existing dwelling; or

15 (2) occur within one thousand feet of any
16 imaginary line extending vertically from an existing dwelling."

17 Section 6. EMERGENCY.--It is necessary for the public
18 peace, health and safety that this act take effect immediately.